

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Gas Company (U 904-G) For Approval of Program Year 2003 Low-Income Assistance Programs and Funding.	Application 02-07-001 (Filed July 1, 2002)
Application of San Diego Gas & Electric Company (U 902-E) For Approval of Program Year 2003 Low-Income Assistance Programs and Funding.	Application 02-07-002 (Filed July 1, 2002)
Application of Pacific Gas and Electric Company (U 39 M) For Approval of the 2003 California Alternate Rates For Energy and Low-Income Energy Efficiency Programs and Budget.	Application 02-07-003 (Filed July 1, 2002)
Southern California Edison Company's (U 338-E) Application Regarding Low-Income Assistance Programs for Program Year 2003.	Application 02-07-004 (Filed July 1, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ADDRESSING MOTION TO INTERVENE AND  
ELIGIBILITY FOR COMPENSATION AWARD OF  
GREENLINING INSTITUTE AND LATINO ISSUES FORUM**

Pursuant to Pub. Util. Code §§ 1801-1812, the Latino Issues Forum and the Greenlining Institute (Greenlining) jointly filed a Notice of Intent (NOI) to claim compensation for their participation in this proceeding. This ruling authorizes Greenlining to intervene in this proceeding and finds that these parties are eligible to file their claims for compensation.

### **Motion to Intervene**

On September 3, 2002, Greenlining filed a motion to intervene in this proceeding because it did not make an appearance at the July 22, 2002 prehearing conference. Greenlining states that its involvement in this case is necessary to represent the interests of various ethnic groups and to ensure that appropriate rapid deployment efforts continue pending program evaluation. Greenlining explains that it will work jointly with the Latino Issues Forum in addressing the issues in this proceeding. I find this request to be reasonable, and will grant the motion with respect to Greenlining's request to intervene.

Greenlining also asks that it be designated as "lead counsel on low-income and minority issues" in this proceeding.<sup>1</sup> Nothing in the Commission's Rules of Practice and Procedure requires that such designations be made in order to allow a party's participation in our proceedings. This aspect of Greenlining's request is denied.

### **Timeliness**

Pub. Util. Code § 1804(a)(1) says in relevant part that "A customer who intends to seek an award...shall, within 30 days after the prehearing conference is held, file and serve...a notice of intent to claim compensation."

A prehearing conference in this proceeding was held on July 22, 2002. Joint Intervenors filed an NOI on August 19, 2002. Hence the NOI was timely filed.

### **Qualification as Customers**

Administrative Law Judge rulings issued pursuant to Pub. Util. Code § 1804(b)(1) or § 1804(b)(2) must rule both on whether the intervenor qualifies as a customer and in which of the three statutory categories the customer falls into.

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<sup>1</sup> Motion, p. 3.

(Decision (D.) 98-04-059, mimeo., p. 31.) Section 1802(b) provides in relevant part that:

“‘Customer’ means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...”

D.86-05-007 dated May 7, 1986 interpreted this statutory definition and clarified the three customer categories set forth in the statute. As summarized by the Commission in D.98-04-059, Category 1 is an actual customer who represents more than his or her own narrow self-interest; a self-appointed representative of at least some other consumers, customers or subscribers of the utility. A Category 2 customer has been authorized by actual customers to represent them. A Category 3 customer is a formally organized group authorized by its articles of incorporation or bylaws to represent the interests of residential customers.

A party seeking eligibility to claim compensation is required to state how it meets the definition of a customer and, for Category 3 customers, point out where in the organization’s articles or bylaws it is authorized to represent the interests of residential ratepayers. If current articles or bylaws have already been filed, the group or organization need only make a specific reference to such filing. Groups should indicate in the NOI the percentage of their membership that is residential ratepayers. Similarly, a Category 2 customer is required to identify the residential customer or customers that authorized him or her to represent that customer. (D.98-04-059, mimeo., pp. 29-30, 83, 88.)

The by-laws of Joint Intervenors authorize them to represent the interests of residential ratepayers before state and federal regulatory agencies and in

court.<sup>2</sup> Latino Issues Forum estimates that its members represent a constituency that is divided 85-15% between residential and small business customers, respectively. For the Greenlining Institute, the division is estimated to be 75-25%. Accordingly, Joint Intervenors qualify as a Category 3 customer.

### **Planned Participation**

Pub. Util. Code § 1804(a)(2)(A)(I) requires that the NOI include a statement of the nature and extent of the customer's planned participation. The Commission has stated that the information provided on planned participation should provide the basis for a more critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, pp. 27-28, 31-33.)

In their NOI, Joint Intervenors state that their active participation is intended to "ensure that appropriate rapid deployment efforts continue pending program evaluation and evaluation of utilities' success in meeting penetration goals." (NOI, p. 3.) In addition, Joint Intervenors plan to participate in order to "ensure low-income input into weatherization and CARE programs, leveraged weatherization dollars, compliance with SB 2X, and maximization of Low Income Oversight Board Input." (*Ibid.*) Joint Intervenors also state that they will "continue their efforts for an effective program of automatic enrollment." (*Ibid.*)

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<sup>2</sup> Joint Intervenors have filed copies of their organizations' bylaws in numerous other notices of intent to seek compensation, including one filed on March 4, 1999 in A.98-12-005. See also, the Administrative Law Judge's Ruling Addressing Eligibility For Compensation Award in Rulemaking (R.) 01-08-027, dated March 29, 2002.

To the extent that these same interests are shared by other parties, or are represented by other parties not seeking intervenor compensation (e.g., the Office of Ratepayer Advocates), Joint Intervenors run the risk that their efforts may merely duplicate those of others. To the extent that such duplication is found, they are at risk of receiving reduced or no compensation for such efforts. The NOI does not provide us with sufficient information to make such a determination at this time. The Commission will consider the issue of duplication of effort when it reviews the subsequent request for compensation.

The Commission has also explained that participation by intervenors is not necessary for a fair determination of the proceeding if the customer argues issues that are irrelevant, beyond the scope of the proceeding or beyond the Commission's jurisdiction. (*Ibid.*, pp. 31-32.) Here, I preliminarily find that the planned participation of Joint Intervenors, as described in their joint NOI, is necessary for a fair determination of the proceeding. However, I note that there may be some overlap between the issues identified by Joint Intervenors in this NOI and the issues that the Commission is considering in R.01-08-027, in which Joint Intervenors have also been found eligible to file a compensation claim. For example, the automatic enrollment program was adopted in that proceeding and the implementation steps, with the exception of establishing the scope and budget for an evaluation study, will be set out and conducted in that proceeding, rather than this one.

Therefore, in preparing their claims for compensation, Joint Intervenors will need to clearly delineate the hours and costs of their involvement with respect to R.01-08-027, this proceeding, and any other Commission forum in which they participate in on behalf of their membership and are eligible for compensation. As discussed in the Assigned Commissioner's Scoping Memo for this proceeding, the focus of this proceeding will be on program year (PY) 2003 Low-Income Energy Efficiency (LIEE) program plans, the evaluation of the all

LIEE measures using the cost-effectiveness methodology adopted by the Commission in D.02-08-034, and establishing the scope of study and budget to evaluate the first 12 months of automatic enrollment and to evaluate rapid deployment CARE outreach efforts and administration.<sup>3</sup>

### **Estimated Compensation Request**

Joint Intervenors present the following joint budget estimates:

#### Attorney Fees

Fees of Robert Gnaizda (50 hours at \$400/hour)	\$20,000
Fees of Susan E. Brown (100 hours at \$325/hour)	\$32,500
Fees of Itzel Berrio (100 hours at \$255/hour)	\$25,500
Fees of Enrique Gallardo (75 hours at \$255/hour)	\$19,125
<b>Subtotal</b>	<b>\$97,125</b>

#### Expert Fees

Fees of John Gamboa (50 hours at \$350/hour)	\$17,500
Fees of Viola Gonzales (50 hours at \$350/hour)	\$17,500
Policy interns and Greenlining fellows (100 hours at \$100/hour)	\$10,000
<b>Subtotal</b>	<b>\$45,000</b>

#### Incidental Costs

Postage, photocopies, deliveries, supplies and telephone	\$5,000
Travel	\$4,000
<b>Subtotal</b>	<b>\$9,000</b>

<b>TOTAL</b>	<b>\$151,125</b>
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<sup>3</sup> See Assigned Commissioner's Ruling Establishing Category and Providing Scoping Memo and Comment Period for CARE Program Evaluation Proposal, August 21, 2002.

The NOI fulfills the requirements of Pub. Util. Code § 1804(a)(2)(A)(ii) by including an itemized estimate of the compensation expected to be requested.

Although this ruling does not address the merits of the final compensation claim by Joint Intervenors, I reiterate and clarify my cautionary observations in a ruling dated November 3, 1998 in R.98-07-037. In that ruling, I cautioned Joint Intervenors and others to carefully review Commission orders and be mindful of the areas where the Commission reduced either the hourly rates or number of hours claimed (e.g., for community outreach efforts, duplication, preparation of compensation requests, among others). In particular, I noted that the hourly fees proposed for attorney and expert fees appeared substantially higher than the levels recently approved. (Ruling, pp. 6-7.)

### **Significant Financial Hardship**

Pub. Util. Code § 1803 authorizes the Commission to award reasonable advocate's and expert witness fees and related costs only to customers who make a substantial contribution to the Commission's decision and for whom participation or intervention in a proceeding without an award of fees imposes a significant financial hardship. The Commission has clarified that the financial hardship test varies by type of customer. (See D.98-04-059, mimeo., pp. 33-37, 89.)

In summary, Category 1 and, in part, Category 2 customers must show by providing their own financial information (which may be filed under seal) that they cannot afford, without undue hardship, to pay the cost of participation. Category 3 customers must show that the economic interest of individual members is small in comparison to the cost of participation. For Category 2 customers where representation is authorized to represent a *group* of customers, the comparison test will not be routinely applied. The question of which test to apply will be determined from the form of customer asserted and customer's specific financial hardship showing.

Pub. Util. Code § 1804 (a)(2)(B) allows the customer to include with the NOI a showing that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included with the request for compensation submitted pursuant to § 1804(c). If a customer has received a finding of significant financial hardship in any proceeding, § 1804(b)(1) creates a rebuttable presumption that the customer is eligible for compensation in other proceedings, which commence within one year of the date of the finding. This rulemaking commenced with its filing on July 23, 1998. Accordingly, any finding that a customer would experience significant hardship, which was made within one year of July 23, 1998, creates a rebuttable presumption of that customer's eligibility in this proceeding.

Joint Intervenors have elected not to include a showing at this time, so it must show significant financial hardship if and when it files a request for compensation. These parties should take note of the financial hardship discussion in D.98-04-059, and demonstrate within any request for compensation that they meet the relevant financial hardship test.

Today's ruling goes only to the eligibility of Joint Intervenors to claim compensation. It does not address the final merits of the claims, which the Commission will address after parties have documented expenses in greater detail and demonstrated substantial contribution to the proceeding, as provided in Pub. Util. Code Article 5.

**IT IS RULED** that:

1. Greenlining may intervene in this proceeding.
2. Joint Intervenors timely filed a joint Notice of Intent for compensation in this proceeding.
3. The Joint Intervenors are a Category 3 customer.
4. Joint Intervenors have fulfilled the requirements of Pub. Util. Code § 1804(a)(2)(A).



5. Joint Intervenors shall make a showing of significant financial hardship in any request for compensation in this proceeding.

6. Joint Intervenors are eligible for an award of compensation for a substantial contribution in this proceeding.

Dated September 27, 2002, at San Francisco, California.

/s/ ANGELA K. MINKIN for

Meg Gottstein

Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Motion to Intervene and Eligibility for Compensation Award of Greenlining Institute and Latino Issues Forum on all parties of record in this proceeding or their attorneys of record.

Dated September 27, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.